REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Final Office Action mailed on January 29, 2010, and the references cited therewith.

Claims 1, 7, 10, 12, 20, 22-24, 30, 32, and 36 are amended, claims 2-4 are canceled, and no claims are added; as a result, claims 1 and 5-38 are now pending in this application.

Examiner's Interview Summary

Applicant thanks Examiner Woods for participating in a telephone interview on April 27, 2010. During the interview, Applicant and the Examiner discussed the § 103 claim rejections in the Office Action mailed on January 29, 2010 and proposed amendments to the independent claims. Although no agreement was reached on specific claim amendment language, Applicant believes the discussion was helpful in moving this application forward toward allowance.

§ 103 Rejection of the Claims

Claims 1, 5, 8, 12-16, 20-21, 30-34, 36-37 were rejected under 35 USC § 103(a) as being unpatentable over DeLuca (U.S. Patent No. 6,440,067) in view of Rogers (U.S. Patent No. 6,957,107). Applicant respectfully traverses the rejection as follow.

Applicant's amended independent claim 1 recites, in part:

monitoring, by a computing device having a computer processor and computer-readable code stored on a computer-readable medium and executable by the computer processor, a number of sensors activated by an individual, wherein the number of sensors are located in a dwelling of the individual;

recording activations of the number of sensors on the computing device in communication with the sensor;

determining a behavior routine of the individual with the computing device based on recorded activations of the number of sensors, wherein a number of patterns of a number of sensor activations are identified that indicate the individual performing a number of activities that make up the behavior routine.

Applicant's amended independent claim 12 recites, in part:

recording, by a computing device having a computer processor and computer-readable code stored on a computer-readable medium and executable by the computer processor, data counts from sensors activated by an individual during a time period on the computing device in communication with the sensors to determine a behavior routine of the individual, wherein the sensors are located in a dwelling of the individual and a number of patterns of the data counts are identified that indicate the individual performing a number of activities that make up the behavior routine;

identifying statistical changes in the data counts relative to expected data counts during the time period with the computing device.

Applicant's amended independent claim 30 recites, in part:

means for signaling that a number of sensors have been activated by an individual during activities of daily living, wherein the number of sensors include sensors located in a dwelling of the individual;

a receiver to receive signals, indicating that the number of sensors have been activated;

a tabulation unit to tabulate the number of received signals;

an analysis unit to analyze the tabulated signals to determine a behavior routine and identify changes in the behavior routine, wherein a number of patterns of a number of sensor activations are identified that indicate the individual performing the activities of daily living that make up the behavior routine.

Applicant's amended independent claim 36 recites, in part:

a receiver to receive activation signals from a number of sensors activated by an individual during activities of daily living, wherein the number of sensors include sensors located in a dwelling of the individual;

a processing unit to tabulate the received signals, wherein a number of patterns of the received activation signals are identified that indicate the individual performing the activities of daily living that make up a behavior routine.

From Applicant's review of the DeLuca reference, DeLuca appears to teach a method of extracting signals from sensors attached to muscles and using the signals to determine a normative data base indicative of a given functional activity. (Column 2, lines 25-40). The method in DeLuca can monitor a given functional

activity using sensors attached to muscles and determine if the functional activity is being completed as compared to the normative data base (Column 6, lines 9-45), but does not use the sensor signals from sensors in a dwelling to determine a behavior routine for an individual. DeLuca does not teach identifying a number of patterns of a number of sensor activations from sensors located in a dwelling that indicate the individual is doing a number of activities that make up a behavior routine.

And Applicant respectfully submits that the Rogers reference does not cure the deficiencies of the DeLuca reference. Rogers appears to teach a method and apparatus for communicating with and monitoring the operation of a device implanted within a patient. (Abstract). Rogers does not teach identifying a number of patterns of a number of sensor activations from sensors located in a dwelling that indicate the individual is doing a number of activities that make up a behavior routine.

Accordingly, Applicant respectfully submits that the DeLuca and Rogers references do not teach or suggest, either individually or in combination, "the number of sensors are located in a dwelling of the individual" and "wherein a number of patterns of a number of sensor activations are identified that indicate the individual doing a number of activities that make up the behavior routine", as recited in independent claim 1 or "wherein the sensors are located in a dwelling of the individual and a number of patterns of the data counts are identified that indicate the individual performing a number of activities that make up the behavior routine", as recited in independent claim 12.

Nor do the DeLuca and Rogers references teach or suggest, either individually or in combination, "the number of sensors include sensors located in a dwelling of the individual" and "a number of patterns of a number of sensor activations are identified that indicate the individual performing the activities of daily living that make up the behavior routine", as recited in independent claim 30 or "the number of sensors include sensors located in a dwelling of the individual" and "a number of patterns of the received activation signals are identified that

indicate the individual performing the activities of daily living that make up a behavior routine", as recited in independent claim 36.

As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of independent claims 1, 12, 30, and 36, as well as those claims which depend therefrom.

Claims 6, 7, 9-11 and 38 were rejected under 35 USC § 103(a) as being unpatentable over DeLuca (U.S. Patent No. 6,440,067) in view of Rogers (U.S. Patent No. 6,957,107) in view of Nichols (U.S. Patent No. 5,330,513). Applicant respectfully traverses the rejection as follows.

Claims 6, 7, 9-11, and 10 depend from independent claim 1 and claim 38 depends from independent claim 36. As described above, Applicant respectfully submits that independent claims 1 and 36 are in condition for allowance. Applicant respectfully submits that the Nichols reference does not cure the deficiencies of the DeLuca and Rogers references. Nichols appears to teach a system that can send data from the pacemaker to a computing device, where the computing device can derive an optimized pacing rate for an individual. (Column 4, lines 26-42).

Accordingly, Applicant respectfully submits that the DeLuca, Rogers, and Nichols references do not teach or suggest, either individually or in combination, "the number of sensors are located in a dwelling of the individual" and "wherein a number of patterns of a number of sensor activations are identified that indicate the individual doing a number of activities that make up the behavior routine", as recited in independent claim 1 or "the number of sensors include sensors located in a dwelling of the individual" and "a number of patterns of the received activation signals are identified that indicate the individual performing the activities of daily living that make up a behavior routine", as recited in independent claim 36.

As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of dependent claims 6, 7, and 9-11, which depend from

independent claim 1, and dependent claim 38 which depends from independent claim 36.

Claims 17 and 35 were rejected under 35 USC § 103(a) as being unpatentable over DeLuca (U.S. Patent No. 6,440,067) in view of Rogers (U.S. Patent No. 6,957,107) and further in view of Official Notice. Applicant respectfully traverses the rejection as follows.

Claims 17 and 35 depend from independent claims 12 and 30, respectively. As described above, Applicant respectfully submits that independent claims 12 and 30 are in condition for allowance.

With regard to the Official Notice, Applicant disputes Examiner's use of Official Notice of the elements of the above referenced claims. Applicant respectfully requests that should Examiner continue to assert official notice, it is requested that Examiner provide support for such subject matter in the form of one or more references. Recording data counts from a sensor with Boolean logic is not old and well-known to one of ordinary skill in the art when used in the context of the independent claims from which they depend. The above reference elements of the claims are not a well known and old part of recording data counts from sensors activated by an individual during a time period on the computing device in communication with the sensors to determine a behavior routine of the individual and an analysis unit to analyze the tabulated signals to determine a behavior routine and identify changes in the behavior routine, as recited in independent claims 12 and 30. Also, the Official Notice recited does not cure the deficiencies of the DeLuca and Rogers references regarding these elements among other details as claimed in independent claims 12 and 30, as amended.

Accordingly, Applicant respectfully submits that the DeLuca and Rogers references and the Official Notice do not teach or suggest, either individually or in combination, "wherein the sensors are located in a dwelling of the individual and a number of patterns of the data counts are identified that indicate the individual

performing a number of activities that make up the behavior routine", as recited in independent claim 12 or "the number of sensors include sensors located in a dwelling of the individual" and "a number of patterns of a number of sensor activations are identified that indicate the individual performing the activities of daily living that make up the behavior routine", as recited in independent claim 30.

As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of dependent claims 17 and 25, which depend from independent claims 12 and 30, respectively.

Claims 18-19 were rejected under 35 USC § 103(a) as being unpatentable over DeLuca (U.S. Patent No. 6,440,067) in view of Rogers (U.S. Patent No. 6,957,107) and further in view of Kutzik (U.S. Patent No. 6,108,685). Applicant respectfully traverses the rejection as follows.

Claims 18-19 depend from independent claim 12. As described above, Applicant respectfully submits that independent claim 12 is in condition for allowance. Applicant respectfully submits that the Kutzik reference does not cure the deficiencies of the DeLuca and Rogers references. Kutzik appears to teach a system for monitoring a user in a user living area doing a daily living activity and providing information representative of the daily living activity to the system controller. (Abstract).

Accordingly, Applicant respectfully submits that the DeLuca, Rogers, and Kutzik references do not teach or suggest, either individually or in combination, "wherein the sensors are located in a dwelling of the individual and a number of patterns of the data counts are identified that indicate the individual performing a number of activities that make up the behavior routine", as recited in independent claim 12.

As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of dependent claims 18-19, which depend from independent claim 12.

Claims 22-27 were rejected under 35 USC § 103(a) as being unpatentable over Rogers (U.S. Patent No. 6,957,107) in view of DeLuca (U.S. Patent No. 6,440,067). Applicant respectfully traverses the rejection as follow.

Applicant's amended independent claim 22 recites, in part:

> sensing data counts associated with a number of activities of daily living for an individual, wherein the data counts are from activations of a number of sensors that are located in a dwelling of an individual;
> determining a behavior routine of the individual based on the sensed data counts, wherein a number of patterns of the sensed data counts are identified that indicate the individual performing the number of activities of daily living that make up the behavior routine.

From Applicant's review of the Rogers reference, Rogers appears to teach a method and apparatus for communicating with and monitoring the operation of a device implanted within a patient. (Abstract). The patient monitoring system in Rogers uses an implanted sensor to transmit data related to medical device or condition of a patient (Column 3, lines 44-63), but does not use the implanted sensor data to determine a behavior routine. Rogers does not teach identifying a number of patterns of a sensed data counts from sensors located in a dwelling that indicate the individual is doing a number of activities that make up a behavior routine.

And Applicant respectfully submits that the DeLuca reference does not cure the deficiencies of the Rogers reference. DeLuca appears to teach a method of extracting signals from sensors attached to muscles and using the signals to determine a normative data base indicative of a given functional activity. (Column 2, lines 25-40). DeLuca does not teach identifying a number of patterns of a sensed data counts from sensors located in a dwelling that indicate the individual is doing a number of activities that make up a behavior routine.

Accordingly, Applicant respectfully submits that the Rogers and DeLuca references do not teach or suggest, either individually or in combination, "the data counts are from activations of a number of sensors that are located in a dwelling of an individual" and "a number of patterns of the sensed data counts are identified that

indicate the individual performing the number of activities of daily living that make up the behavior routine", as recited in amended independent claim 22.

As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection of independent claim 22, as well as those claims which depend therefrom.

Claim 28 was rejected under 35 USC § 103(a) as being unpatentable over Rogers (U.S. Patent No. 6,957,107) in view of DeLuca (U.S. Patent No. 6,440,067)and further in view of Official Notice. Applicant respectfully traverses the rejection as follows.

Claim 28 depends from independent claim 22. As described above, Applicant respectfully submits that independent claim 22 is in condition for allowance.

With regard to the Official Notice, Applicant disputes Examiner's use of Official Notice of the elements of the above referenced claim. Applicant respectfully requests that should Examiner continue to assert official notice, it is requested that Examiner provide support for such subject matter in the form of one or more references. Identifying a sensor that is not transmitting data counts based on the statistical change in the data counts of the sensor relative to expected data counts for the sensor is not old and well-known to one of ordinary skill in the art when used in the context of the independent claims from which they depend. The above reference elements of the claims are not a well known and old part of identifying when the statistical change in the data counts relative expected data counts exceed a statistical threshold value, as recited in independent claim 22. Also, the Official Notice recited does not cure the deficiencies of the Rogers and DeLuca references regarding these elements among other details as claimed in independent claim 22, as amended.

Accordingly, Applicant respectfully submits that the Rogers and DeLuca references and the Official Notice do not teach or suggest, either individually or in

combination, "the data counts are from activations of a number of sensors that are located in a dwelling of an individual" and "a number of patterns of the sensed data counts are identified that indicate the individual performing the number of activities of daily living that make up the behavior routine", as recited in independent claim 22.

As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of dependent claim 28, which depends from independent claim 22.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' below listed attorney at (612) 236-0121 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 CFR §1.8:
The undersigned hereby certifies that this correspondence is being deposited with the United States Patent and Trademark Office on this 29th day of _April_ , 2010.

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